

**UNITED STATES DISTRICT COURT
THE DISTRICT OF MASSACHUSETTS**

IN RE PHARMACEUTICAL INDUSTRY AVERAGE WHOLESALE PRICE LITIGATION	MDL NO. 1456 Civil Action No. 01-CV-12257-PBS Judge Patti B. Saris
THIS DOCUMENT RELATES TO: <i>State of Montana v. Abbott Labs Inc., et al.,</i> 02-CV-12084-PBS	

**LOCAL RULE 56.1 REPLY STATEMENT OF
UNDISPUTED FACTS IN SUPPORT
OF PFIZER'S AND PHARMACIA'S
MOTION FOR SUMMARY JUDGMENT**

Pursuant to Local Rule 56.1, defendants Pfizer Inc. ("Pfizer"), and Pharmacia Corporation and Pharmacia & Upjohn (together, "Pharmacia") submit this reply statement of the material facts of record as to which there is no genuine issue to be tried in support of their motion for summary judgment.

Responses to Plaintiff's Local Rule 56.1 Counter-Designations

15. Response to Counter-Designation: Denied that Direct Price was not available to Montana providers during the relevant time period at issue in this lawsuit. Pfizer drugs were available to Montana providers at Direct Price from 1991 through 2001. (McPhillips Decl. ¶ 7.) Upjohn drugs were available to Montana providers at Direct Price from 1991 through 2003 (Engels Decl. ¶ 6.) Pharmacia drugs were available to Montana providers at Direct Price from at least 1995 through 2003. (Engels Decl. ¶ 7.) Denied that the documents and transcript cited by plaintiff confirm the unavailability of direct pricing to Montana pharmacies.

17. Response to Plaintiff's Statement: Denied that it is undisputed that Montana providers could not acquire the drugs directly from manufacturers. Montana providers could acquire drugs directly from Pfizer, Pharmacia and Upjohn at Direct Price. (Engels Decl. ¶¶ 6-7; McPhillips Decl. ¶ 7.)

Additional Undisputed Facts

38. During the period from 1991 through January of 2001, Pfizer's drugs were available to Montana providers for purchase from Pfizer at Direct Price. (McPhillips Decl. ¶ 7.)

39. Direct Prices for Pfizer drugs were published in Pfizer's annual Direct Retailer & Hospital Price List, and were also available through third-party publications such as those published by RedBook, First DataBank, and Medi-Span. (McPhillips Decl. ¶ 6; Stempel Reply Decl. Exhs. 15-17.)

40. During the period from 1991 through 2003, Upjohn's drugs were available to Montana providers for purchase at Direct Price. (Engels Decl. ¶ 6.)

41. Direct Prices for Upjohn drugs were published in Upjohn's annual price catalog, and were also available through third-party publications such as those published by RedBook, First DataBank, and Medi-Span. (Engels Decl. ¶ 5; Stempel Reply Decl. Exhs. 15-17.)

42. From at least 1995 through 2003, Pharmacia's drugs were available to Montana providers for purchase at Direct Price. (Engels Decl. ¶ 7.)

43. Direct Prices for Pharmacia drugs were published in Pharmacia's annual price catalog, and were also available through third-party publications such as those published by RedBook, First DataBank, and Medi-Span. (Engels Decl. ¶ 5; Stempel Reply Decl. Exhs. 15-17.)

44. Pfizer's Direct Price was approximately 5% above its Wholesale List Price. (McPhillips Decl. ¶ 4.)

45. Pharmacia's Direct Price was the same as its Wholesale Acquisition Cost. (Engels Decl. ¶ 4.)

Respectfully submitted,

Dated: May 10, 2007

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CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of May, 2007, a true and accurate copy of the Local Rule 56.1 Reply Statement of Undisputed Facts in Support of Pfizer's and Pharmacia's Motion for Summary Judgment was served upon all parties of record via the Lexis-Nexis Filing System:

DATED: May 10, 2007.

/s/ Mark D. Smith